

NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT

RULE 605 – HEARING PROCEDURES

(Adopted July 13, 1976 as Humboldt Co. APCD and Mendocino County APCD)(Amended December 14, 1981 as Del Norte Co. APCD)(Adopted November 3, 1982 as Unified District)(Amended and Recodified May 19, 2005)

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RULE 605 HEARING PROCEDURES

1.0 HEARING PROCEDURES:

- 1.1 Place of Hearing:** All hearings shall be held at such time and place as designated by the Clerk of the Hearing Board on the notice of hearing.
- 1.2 Notice of Hearing:**
 - 1.2.1** Except as provided for in Rule 605 (1.3), (1.4), and (1.5), the Hearing Board shall serve notice of the time and place of the hearing upon the Control Officer and upon the applicant or permittee affected not less than 10 days prior to such hearing.
 - 1.2.2** Except as provided for in Rule 605 (1.3), (1.4), and (1.5), the Hearing Board shall also send notice of hearing to every person who requests such notice and obtain publication of such notice in at least one daily newspaper of general circulation within the district. The notice shall state the time and place of the meeting, and reasonably apprise the people within the district of the purpose of the meeting.
- 1.3 Short Term Variances/Modifications of Increments of Progress:** In the case of a hearing to consider an application for a variance, or a series of variances to be in effect for a period of not more than 90 days, or an application for a modification of a schedule of increments of progress:
 - 1.3.1** The Hearing Board shall serve notice of the time and place of a hearing to grant such a variance or modification upon the Control Officer, all the North Coast Air Basin districts, the California Air Resources Board, the Environmental Protection Agency, and upon the applicant or permittee not less than 10 days prior to such hearing. (H&S 40825)
 - 1.3.2** Rule 605 (1.2.2) shall not apply.
 - 1.3.3** The Chairman of the Hearing Board or any other member of the Hearing Board so designated by the Hearing Board, except for an alternate member, may hear an application for a short term variance. If any member of the public contests a decision made by any one member of the Hearing Board, the application shall be reheard by the full Hearing Board within 10 days of the decision.

- 1.4 Interim Variance:** In the case of a hearing to consider an application for an interim variance, as authorized in Rule 603:
- 1.4.1** The Hearing Board shall serve reasonable notice of the time and place of the hearing on the Control Officer and upon the applicant.
- 1.4.2** The Chairman of the Hearing Board or any other member of the Hearing Board so designated by the Hearing Board, except for an alternate member, may hear an application for an interim variance. If any one member of the public contests a decision made by any one member of the Hearing Board, the application shall be reheard by the full Hearing Board within 10 days of the decision.
- 1.5 Regular Variance Procedure:** In the case of a hearing to consider an application for variance, other than a 90 day variance, or an interim variance, or an application for a modification of a final compliance date in a variance previously granted, the notice requirements shall be as follows:
- 1.5.1** The Hearing Board shall serve a notice of the time and place of a hearing to the Control Officer, all other districts in the North Coast Air Basin, the state board, the Environmental Protection Agency, and upon the petitioner or permittee at least 15 days prior to the hearing.
- 1.5.2** The Hearing Board shall also publish a notice of the hearing in at least one newspaper of general circulation within the district, and send such notice, at least 15 days prior to the hearing to every person who requests such notice.
- 1.5.3** The notice shall state the time and the place of the hearing, the time when, commencing not less than 15 days prior to the hearing, and the place where the application including any proposed conditions or schedule of increments of progress is available for public inspection.
- 1.6 Answers:** Parties to the petition may file a response within 10 days after service. All responses shall be served the same as petitions under Rule 601(1.1).
- 1.7 Continuances:** For any petition hearing requiring the attendance of a quorum of the Hearing Board for action, the Hearing Board, by majority vote, may grant any reasonable continuance of the hearing. For any petition hearing which can be acted on by a single member of the Hearing Board, the Chairman or presiding Hearing Board Member may grant any reasonable continuance of the hearing upon request of either the petitioner or the respondent. Such action may be without prior notice.
- 1.8 Evidence:**
- 1.8.1** Oral evidence shall be taken only on oath or affirmation.
- 1.8.2** Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf, he may be called and examined as if under cross examination.
- 1.8.3** The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

- 1.8.4** Whenever the members of the Hearing Board conducting any hearing deem it necessary to examine any person as a witness at such hearing, the Chairman of the Hearing Board may issue a subpoena, in proper form, commanding such person to appear before it at a time and place specified to be examined as a witness. The subpoena may require such person to produce all books, papers, and documents in his possession or under his control, material to such a hearing. A subpoena to appear before the Hearing Board shall be served in the same manner as a subpoena in a civil action.
- 1.8.5** The Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this state.
- 1.8.6** The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to the matter under consideration, and shall consider such testimony in making its decision.

1.9 Hearing Procedures

1.9.1 Identification of the Parties: Each Hearing before the Hearing Board shall consist of two sides, the petitioner and the respondent, and may also include participation by amicus parties and the public.

- a. The Petitioner shall be the party (or parties) filing the moving petition before the Hearing Board.
- b. The Respondent shall be the party (or parties) responding to the initial moving petition filed by the Petitioner to be considered before the Hearing Board.
- c. Amicus Party: Upon prior approval by the Hearing Board, an amicus party may file a petition supporting either the Petitioner or the respondent, or as a friend of the Hearing Board.
- d. Public: All persons not otherwise identified as the Petitioner, Respondent, or an Amicus Party shall be members of the public.

1.9.2 The Hearing Procedures: All Hearings before the AQMD Hearing board shall be guided by the following procedures:

1.9.2.1 Summary of evidence. Prior to the beginning of each hearing, the Petitioner and the Respondent shall provide a brief written summary of its position and of evidence to be presented during the hearing to the Clerk of the Hearing Board, along with 10 copies of all documentary evidence. The Clerk of the Hearing Board shall retain an original for the Clerk's formal record of the proceeding and distribute copies of the evidence to each Hearing Board member, Counsel to the Hearing Board, the Petitioner, the Respondent and make available a copy to the public.

1.9.2.2 Opening the Hearing. The Hearing shall begin by the AQMD Hearing Board Chair formally opening the hearing, stating the purpose of the hearing, and identifying the petitioner and the respondent, and amicus parties, if applicable.

1.9.2.3 Conflict of Interest. If any member of the Hearing Board believes he or she has a conflict of interest or for some other reason should reclude him or herself, the member shall announce such conflict and withdraw from participation in the hearing.

1.9.2.4 Oath of affirmation. As an alternative to the Chair individually giving oath of affirmations to each person intending to present evidence during the Hearing, the Hearing Board Chair may collectively give oath of affirmation to all those who express intent to present evidence during the hearing, as long as the Clerk of the Hearing Board maintains a record of the names of those having been provided the oath and introducing evidence into the hearing.

1.9.2.5 Proposed Conditions for Variance or Order. Even if the Control Officer opposes or does not support the issuance of a variance or order, the Control Officer shall submit proposed conditions for the issuance of a variance or order for the consideration of the Hearing Board, in the event the Board chooses to exercise its discretion in the issuance of a variance or order.

1.9.2.6 Marking of Evidence. Evidence shall be formally referenced as "Petitioner's Exhibits" P-1, P-2, P-3...etc. and "Respondent's Exhibits" R-1, R-2.R-3, etc.

1.9.2.7 Time Limits for Hearing. The Chair, at his or her discretion, may impose a reasonable time limit for the conduct of the hearing, provided that the Petitioner and Respondent have equal time in which to present their respective cases. Time limits may be for the conduct of the entire hearing or for identifiable components of the hearing (such as opening statements, closing statements, etc.).

1.9.2.8 Opening Statements. Petitioner and then, Respondent shall have the right to provide a brief oral opening statement prior to the introduction of evidence. However, the parties may elect to waive opening statements and proceed directly to the introduction of evidence.

1.9.2.9 Petitioner's Evidence. The Petitioner shall present its case first to the Hearing Board and shall carry the burden of proving the Petitioner's case and introducing evidence relevant to the Petitioner's petition. The Respondent shall have the right to cross-examine each witness called by Petitioner, and the Board or Hearing Officer may direct questions to the witnesses.

1.9.2.10 Respondent's Evidence. Following the Petitioner's presentation of evidence, the Respondent shall next have the opportunity to present evidence on issues relevant to the petition. The Petitioner shall have the right to cross-examine each witness called by Respondent, and the Board of Hearing Officer may direct questions to the witnesses.

1.9.2.11 Order of Witnesses. Notwithstanding other provisions in these Rules, the Hearing Board may, for the convenience and scheduling of witnesses, permit a party to call a witness out of order.

1.9.2.12 Public testimony. Following the presentation of evidence by the Petitioner and Respondent, the Chair shall open the Hearing to the public for comment or testimony. The Chair, in his or her discretion, may impose a time limit that shall apply equally to each member of the public who addresses the Hearing Board. All public testimony presented during the Hearing shall be relevant to the petition and shall be directed to the Hearing Board. If the Chair determines such testimony is not relevant to the petition before the hearing Board, the Chair may so advise the speaker and terminate the speaker's opportunity to provide irrelevant public testimony. The Public shall have the right to present all relevant testimony, subject to any time limits imposed by the Chair.

1.9.2.13 Petitioner's Closing Statement. The Petitioner shall next be provided an opportunity to present a closing statement to the Hearing Board.

1.9.2.14 Respondent's Closing Statement. The Respondent shall next be provided an opportunity to present a closing statement to the Hearing Board.

1.9.2.15 Petitioner's Rebuttal to Respondent's closing Statement. The Petitioner shall next be provided an opportunity to present a rebuttal to the Respondent's Closing Statement. The rebuttal shall be limited to comments on evidence or issues raised in the closing statements of the Respondent.

1.9.2.16 Closing Public hearing. The Chair shall then close the Public Hearing.

1.9.2.17 Hearing Board Consideration and Action. The Chair shall then direct the Hearing Board to consider and act on the petition. During the discussion and consideration of action by the Hearing Board on the petition, the Hearing Board may ask for clarification of prior testimony and evidence having been provided, however, no new evidence shall be introduced following the close of the hearing.

1.9.2.18 Hearing Board Action. The Hearing Board shall act on the petition and issue a verbal decision and direct the Hearing Board Counsel to prepare a written ruling or order pursuant to Rule 606, Decisions.

1.9.2.19 Open Meeting Comment Period. Prior to adjournment of the Hearing Board meeting, the Chairman shall open the meeting up to public comment pursuant to Government Code Section 54957.

1.10 Counsel For the Hearing Board

The Hearing Board shall have independent legal counsel, retained by the AQMD and

pursuant to a contract approved by the AQMD Governing Board of Directors. The Hearing Board Counsel shall advise the Hearing Board and assist the Board in ensuring legal requirements for all hearings are reasonably fulfilled in acting on petitions. The Hearing Board Counsel shall, at the direction of the Hearing Board, prepare Orders of the Hearing Board for the approval and signature of the Hearing Board Chair. The Hearing Board Counsel shall interact with the Control Officer for matters pertaining to the Hearing Board.

1.11 Clerk of the Hearing Board Responsibilities

1.10.1 The Clerk of the Hearing Board shall be the legal custodian of records for all Hearing Board files.

1.10.2. All petitions for hearing before the Hearing Board, including, but not necessarily limited to, petitions for emergency variances and interim variances, shall be submitted directly to the Clerk of the Hearing Board. Petitions initiated by the Control Officer and Amicus Party communications shall be filed with the Clerk of the Board.

1.10.3 All communication, correspondence, and evidence concerning the subject of a hearing, by any party to the hearing (including amicus parties) or member of the public, shall be directed to the Clerk of the Hearing Board, except for information delivered during a public hearing.

1.10.4 The Clerk of the Hearing Board shall distribute the communication, correspondence, and evidence as expeditiously as reasonable to the other parties.

1.12 Public and Ex Parte Communication

1.12.1 Once a petition has been filed with the Clerk of the Hearing Board, Hearing Board members shall refrain from making public comment on the matter of the petition. Additionally, Hearing Board members shall refrain from communicating directly with the petitioner about the subject matter of the petition, except in regards to procedural matters which may be communicated directly to the Control Officer. Hearing Board members shall not attempt to obtain information or evidence outside the hearing, and shall disclose at the hearing ex parte communication if any.